

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KAISER SAID ELMI, TESFARGHABAR
BERHANE, MOHAMED MUHIDDIN,
ZELALEM CHERNET,

Plaintiffs,

v.

SSA MARINE, INC., a WASHINGTON
CORPORATION, JOHN BELL, TOM
HSUE, WILLIAM KENDALL, THE PORT
OF SEATTLE, A KING COUNTY
GOVERNMENTAL ENTITY, JACK
MYERS, individually and in his OFFICIAL
CAPACITY as an OFFICER of the PORT
OF SEATTLE POLICE DEPARTMENT,
JOSE SANTIAGO, individually and in his
OFFICIAL CAPACITY as an OFFICER of
the PORT OF SEATTLE POLICE
DEPARTMENT; TERRENCE KWAN,
individually and in his OFFICIAL
CAPACITY as an OFFICER of the PORT
OF SEATTLE POLICE DEPARTMENT,
WALTER WESSON, individually and in
his OFFICIAL CAPACITY as an OFFICER
of the PORT OF SEATTLE POLICE
DEPARTMENT, CHAD RIVERS,
MICHAEL STILLMAN CABACCANG,
JOSEPH KOLLMAR, BRENNON BRENT,
DOES 1-150,

Defendants.

No. 2:13-cv-01703-JCC

PORT OF SEATTLE DEFENDANTS'
ANSWER TO COMPLAINT

JURY DEMAND

1 COME NOW Defendants Port of Seattle, Jack Myers, Jose Santiago, Walter
2 Wesson and Terrence Kwan (hereafter "PORT OF SEATTLE Defendants"), and answer
3 Plaintiffs' Complaint as follows:

4 **I. JURISDICTION**

5 1. PORT OF SEATTLE Defendants deny that Plaintiffs state a claim against
6 them under federal law, deny that the action is between citizens of different states, deny that
7 Plaintiffs state a claim against them for deprivation of rights under color of any State Law,
8 and deny that supplemental jurisdiction should be exercised against them. PORT OF
9 SEATTLE Defendants admit that venue is proper, but deny all other allegations and
10 inferences to be drawn therefrom.

11 **II. PARTIES**

12 2.1 PORT OF SEATTLE Defendants lack knowledge or information sufficient
13 to form a belief about the truth of the allegations, and therefore deny.

14 2.2 PORT OF SEATTLE Defendants lack knowledge or information sufficient
15 to form a belief about the truth of the allegations, and therefore deny.

16 2.3 PORT OF SEATTLE Defendants lack knowledge or information sufficient
17 to form a belief about the truth of the allegations, and therefore deny.

18 2.4 PORT OF SEATTLE Defendants lack knowledge or information sufficient
19 to form a belief about the truth of the allegations, and therefore deny.

20 2.5 As this allegation relates to another Defendant, PORT OF SEATTLE
21 Defendants neither admit or deny the allegations.

22 2.6 As this allegation relates to another Defendant, PORT OF SEATTLE
23 Defendants neither admit or deny the allegations.

24 2.7 As this allegation relates to another Defendant, PORT OF SEATTLE
25 Defendants neither admit or deny the allegations.

26 2.8 As this allegation relates to another Defendant, PORT OF SEATTLE
27 Defendants neither admit or deny the allegations.

1 2.9 PORT OF SEATTLE Defendants admit the PORT OF SEATTLE is a
2 government entity with a police force and deny all else.

3 2.10 PORT OF SEATTLE Defendants deny that Jack Myers engaged in any
4 unlawful conduct and deny all else.

5 2.11 PORT OF SEATTLE Defendants deny that Jose Santiago engaged in any
6 unlawful conduct and deny all else.

7 2.12 PORT OF SEATTLE Defendants deny that Terrence Kwan engaged in any
8 unlawful conduct and deny all else.

9 2.13 PORT OF SEATTLE Defendants deny that Walter Wesson engaged in any
10 unlawful conduct and deny all else.

11 2.14 PORT OF SEATTLE Defendants admit that Chad Rivers was charged and
12 prosecuted based upon the PORT OF SEATTLE Defendants' investigations and deny all
13 else.

14 2.15 As this allegation relates to another Defendant, PORT OF SEATTLE
15 Defendants neither admit or deny the allegations.

16 2.16 As this allegation relates to another Defendant, PORT OF SEATTLE
17 Defendants neither admit or deny the allegations.

18 2.17 As this allegation relates to another Defendant, PORT OF SEATTLE
19 Defendants neither admit or deny the allegations.

20 2.18 PORT OF SEATTLE Defendants deny all allegations and inferences to be
21 drawn therefrom.

22 2.19 PORT OF SEATTLE Defendants deny all allegations and inferences to be
23 drawn therefrom.

24 2.20 PORT OF SEATTLE Defendants deny all allegations and inferences to be
25 drawn therefrom.

26 2.21 PORT OF SEATTLE Defendants deny all allegations and inferences to be
27 drawn therefrom.

2.22 PORT OF SEATTLE Defendants deny any wrongdoing and any violation of statutory or common law.

2.23 PORT OF SEATTLE Defendants admit that claims were filed and deny all else.

III. FACTS

3.1 PORT OF SEATTLE Defendants, upon information and belief, admit that Plaintiffs have at times worked as short-haul truckers at the Port of Seattle and SSA. PORT OF SEATTLE Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations, and therefore deny.

3.2 PORT OF SEATTLE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations, and therefore deny.

3.3 PORT OF SEATTLE Defendants admit that this paragraph describes generally some of the duties of a short-haul trucker.

3.4 PORT OF SEATTLE Defendants admit that the Port of Seattle owns Terminal 30 and lack knowledge or information sufficient to form a belief about the truth of the remaining allegations, and therefore deny.

3.5 PORT OF SEATTLE Defendants deny that PORT OF SEATTLE is the owner of the Terminal as legal conclusions, and is without knowledge as to the remaining allegations and therefore denies the same.

3.6 As this allegation relates to another Defendant, PORT OF SEATTLE Defendants neither admit or deny the allegations.

3.7 As this allegation relates to another Defendant, PORT OF SEATTLE Defendants neither admit or deny the allegations.

3.8 PORT OF SEATTLE Defendants deny the allegations.

3.9 As this allegation relates to another Defendant, PORT OF SEATTLE Defendants neither admit or deny the allegations.

1 3.10 PORT OF SEATTLE Defendants deny.

2 3.11 PORT OF SEATTLE Defendants are without sufficient information to either
3 admit or deny the allegations, and therefore deny.

4 3.12 PORT OF SEATTLE Defendants lack knowledge or information sufficient o
5 form a belief about the truth of the remaining allegations, and therefore deny.

6 3.13. PORT OF SEATTLE Defendants admit that Santiago and Myers responded
7 and deny all else.

8 3.14. As this allegation relates to another Defendant, PORT OF SEATTLE
9 Defendants neither admit or deny the allegations.

10 3.15. PORT OF SEATTLE Defendants deny that Port of Seattle Officers acted
11 under the direction of SSA Marine or its agents, and deny all else.

12 3.16 PORT OF SEATTLE Defendants admit that CABACCANG was not
13 arrested or cited and deny all else.

14 3.17 As this allegation relates to another Defendant, PORT OF SEATTLE
15 Defendants neither admit or deny the allegations.

16 3.18 PORT OF SEATTLE admit there was evidence that Chad Rivers committed
17 an assault, admit they referred the case to the King County Prosecutor, who filed charges
18 and deny all else.

19 3.19 As this allegation relates to another Defendant, PORT OF SEATTLE
20 Defendants neither admit or deny the allegations.

21 3.20 PORT OF SEATTLE admit there was evidence that Chad Rivers committed
22 an assault, admit they referred the case to the King County Prosecutor, who filed charges
23 and deny all else.

24 3.21 PORT OF SEATTLE Defendants admit that Rivers was cited and deny all
25 else.

26 3.22 As this allegation relates to another Defendant, PORT OF SEATTLE
27 Defendants neither admit or deny the allegations.

1 3.23 As this allegation relates to another Defendant, PORT OF SEATTLE
2 Defendants neither admit or deny the allegations.

3 3.24 PORT OF SEATTLE Defendants lack sufficient knowledge to either deny or
4 admit the allegations and therefore deny.

5 3.25 PORT OF SEATTLE Defendants admit there was evidence that Chad Rivers
6 committed an assault, admit they referred the case to the King County Prosecutor, who filed
7 charges, and deny all else.

8 3.26 PORT OF SEATTLE Defendants lack knowledge or information sufficient
9 to form a belief about the truth of the allegations, and therefore deny.

10 3.27 PORT OF SEATTLE Defendants lack knowledge or information sufficient
11 to form a belief about the truth of the allegations, and therefore deny.

12 3.28 As this allegation relates to another Defendant, PORT OF SEATTLE
13 Defendants neither admit or deny the allegations.

14 3.29 As this allegation relates to another Defendant, PORT OF SEATTLE
15 Defendants neither admit or deny the allegations.

16 3.30 As this allegation relates to another Defendant, PORT OF SEATTLE
17 Defendants neither admit or deny the allegations.

18 3.31 As this allegation relates to another Defendant, PORT OF SEATTLE
19 Defendants neither admit or deny the allegations.

20 3.32 As this allegation relates to another Defendant, PORT OF SEATTLE
21 Defendants neither admit or deny the allegations.

22 3.33 PORT OF SEATTLE Defendants deny the allegation.

23 3.34 PORT OF SEATTLE Defendants lack knowledge or information sufficient
24 to form a belief about the truth of the remaining allegations, and therefore deny.

25 3.35 PORT OF SEATTLE Defendants lack knowledge or information sufficient
26 to form a belief about the truth of the remaining allegations, and therefore deny.

27 3.36 PORT OF SEATTLE Defendants admit that Rivers was cited.

1 3.37 As this allegation relates to another Defendant, PORT OF SEATTLE
2 Defendants neither admit or deny the allegations.

3 3.38 As this allegation relates to another Defendant, PORT OF SEATTLE
4 Defendants neither admit or deny the allegations.

5 3.39 – 3.45 As these allegations relates to another Defendant, PORT OF
6 SEATTLE Defendants neither admit or deny the allegations, and to the extent any response
7 is needed, deny the allegations.

8 **IV. STATEMENT OF DAMAGES**

9 4.1 PORT OF SEATTLE Defendants deny.

10 4.2 PORT OF SEATTLE Defendants deny.

11 4.3 PORT OF SEATTLE Defendants deny.

12 4.4 PORT OF SEATTLE Defendants deny.

13 4.5 PORT OF SEATTLE Defendants deny.

14 **V. CAUSES OF ACTION**

15 COUNT ONE

16 Violation Of Civil Rights (Title 42 U.S.C. Section 1983)

17 (As To Plaintiffs ELMI, BERHANE, AND MUHIDDIN)

18 (As To Defendants MYERS, SANTIAGO, KWAN, WESSON, and DOES 1-25)

19 5.1 PORT OF SEATTLE Defendants reassert their answers set forth above.

20 5.2 PORT OF SEATTLE Defendants deny.

21 5.3 PORT OF SEATTLE Defendants deny.

22 5.4 PORT OF SEATTLE Defendants lack knowledge or information sufficient
23 to form a belief about the truth of the allegations, and therefore deny.

24 5.5 PORT OF SEATTLE Defendants deny.

25 COUNT TWO

26 Violation Of Civil Rights (Title 42 U.S.C. Section 1983)

27 (As To Plaintiffs ELMI, BERHANE, AND MUHIDDIN)

(As To Defendants PORT OF SEATTLE, and DOES 26-50)

5.6 PORT OF SEATTLE Defendants reassert their answers set forth above.

5.7 PORT OF SEATTLE Defendants deny.

5.8 PORT OF SEATTLE Defendants deny.

5.9 PORT OF SEATTLE Defendants deny.

COUNT THREE

Violation Of Civil Rights (Title 42 U.S.C. Section 1983)

(As To Plaintiffs ELMI AND MUHIDDIN)

(As To Defendants PORT OF SEATTLE MARINE, BELL, HSUE, KENDALL,
BRENT, and DOES 101- 250)

5.10 PORT OF SEATTLE Defendants reassert their answers set forth above.

5.11 PORT OF SEATTLE Defendants deny.

5.12 PORT OF SEATTLE Defendants deny.

5.13 PORT OF SEATTLE Defendants deny.

COUNT FOUR

RACIAL/NATIONAL ORIGIN DISCRIMINATION in Violation of Title VII

(As To All PLAINTIFFS)

(As To All PORT OF SEATTLE DEFENDANTS)

5.14 PORT OF SEATTLE Defendants reassert their answers set forth above.

5.15 PORT OF SEATTLE Defendants deny.

5.16 PORT OF SEATTLE Defendants deny.

5.17 PORT OF SEATTLE Defendants deny.

5.18 PORT OF SEATTLE Defendants deny.

COUNT FIVE

BATTERY AND ASSAULT

(As To Defendants PORT OF SEATTLE MARINE, CABACCANG, RIVERS,
AND KOLLMAR)

- 1 5.19 PORT OF SEATTLE Defendants reassert their answers set forth above.
- 2 5.20 PORT OF SEATTLE Defendants lack knowledge or information sufficient
3 to form a belief about the truth of the allegations, and therefore deny.
- 4 5.21 PORT OF SEATTLE Defendants lack knowledge or information sufficient
5 to form a belief about the truth of the allegations, and therefore deny.
- 6 5.22 Omitted.
- 7 5.23 Omitted.
- 8 5.24 Omitted.
- 9 5.25 Omitted.
- 10 5.26 PORT OF SEATTLE Defendants deny.
- 11 5.27 PORT OF SEATTLE Defendants deny.
- 12 5.28 PORT OF SEATTLE Defendants deny.
- 13 COUNT SIX
- 14 RACIAL/NATIONAL ORIGIN DISCRIMINATION UNDER RCW 49.60.030
- 15 (As To All DEFENDANTS)
- 16 5.29 PORT OF SEATTLE Defendants reassert their answers set forth above.
- 17 5.30 PORT OF SEATTLE Defendants deny.
- 18 5.31 PORT OF SEATTLE Defendants deny.
- 19 5.32 PORT OF SEATTLE Defendants deny.
- 20 COUNT SEVEN
- 21 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
- 22 (As To All DEFENDANTS)
- 23 5.33 PORT OF SEATTLE Defendants reassert their answers set forth above.
- 24 5.34 PORT OF SEATTLE Defendants deny.
- 25 5.35 PORT OF SEATTLE Defendants deny.
- 26 5.36 PORT OF SEATTLE Defendants deny.
- 27 5.37 PORT OF SEATTLE Defendants deny.

1 COUNT EIGHT NEGLIGENCE

2 (As To All DEFENDANTS)

3 5.38 PORT OF SEATTLE Defendants reassert their answers set forth above.

4 5.39 PORT OF SEATTLE Defendants deny.

5 5.40 PORT OF SEATTLE Defendants deny.

6 **VI. JURY TRIAL DEMAND**

7 6.0 PORT OF SEATTLE Defendants demand a jury trial in this matter.

8 **VII. AFFIRMATIVE DEFENSES**

9 BY WAY OF FURTHER ANSWER AND AS AFFIRMATIVE DEFENSES,
10 PORT OF SEATTLE Defendants allege:

11 1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted and
12 therefore should be dismissed with prejudice and with costs and fees awarded to PORT OF
13 SEATTLE Defendants.

14 2. PORT OF SEATTLE Defendants are entitled to qualified immunity against
15 discovery and suit.

16 3. Plaintiffs have failed to mitigate their damages, if any.

17 4. Plaintiffs' claims are barred in whole or in part by contributory and comparative
18 fault.

19 5. Plaintiffs' claims for punitive damages are barred by the fact Defendants did not
20 act with malice or reckless indifference with respect to Plaintiffs.

21 6. The Court lacks subject matter jurisdiction over some or all of the claims
22 asserted.

23 7. PORT OF SEATTLE Defendants presently have insufficient knowledge and
24 information on which to form a belief as to whether they may have additional, as yet
25 unstated, affirmative defenses available and reserve the right to assert additional defenses if
26 discovery indicates such additional defenses would be appropriate.

1 **VIII. PRAYER FOR RELIEF**

2 WHEREFORE, having fully answered Plaintiffs' Complaint, PORT OF SEATTLE
3 Defendants pray for the following relief:

- 4 1. Dismissal of Plaintiffs suit with prejudice.
- 5 2. Reasonable and statutory attorneys' fees and costs for having to defend this
6 action;
- 7 3. For such other and further relief as the Court may deem just and equitable.

8
9 DATED: February 28, 2014

10 KEATING, BUCKLIN & McCORMACK,
11 INC., P.S.

12 By: /s/ Andrew Cooley
13 Andrew Cooley, WSBA #15189
14 Of Attorneys for Port Defendants
15 PORT OF SEATTLE, JACK MYERS, JOSE
16 SANTIAGO, TERRENCE KWAN, and
17 WALTER WESSON

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19 Seattle, WA 98104-3175
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27

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 28, 2014, I electronically filed the foregoing with
3 the Clerk of the Court using the CM/ECF system which will send notification of such filing
4 to the following:

5 **Attorneys for Plaintiffs**

6 Lawrence A. Hildes
7 P.O. Box 5405
8 Bellingham, WA 98227
9 Email: lhildes@earthlink.net

10 **Attorneys for Defendant SSA Marine, Inc., John Bell, Brandon Brent, Tom Hsue and William Kendall**

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12 Ryan, Swanson & Cleveland, PLLC
13 1201 Third Avenue, Suite 3400
14 Seattle, WA 98101-3034
15 Email: lentini@ryanlaw.com

16 DATED: February 28, 2014

17 /s/ Andrew Cooley

18 Andrew Cooley, WSBA #15189
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